

HONORABLE BENJAMIN H. SETTLE

15-6292

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

BRENDAN MCKOWN, a single
individual,

Plaintiff,

v.

SIMON PROPERTY GROUP, INC. d/b/a
TACOMA MALL, a Delaware
corporation; IPC INTERNATIONAL
CORPORATION, an Illinois corporation,

NO: 3:08-cv-05754-BHS

**DEFENDANT IPC INTERNATIONAL
CORP.'S SUPPLEMENTAL DISCLOSURE
OF EXPERT WITNESSES**

COMES NOW Defendant IPC International Corp., by and through its attorneys of record
and pursuant to the Order Granting Stipulated Motion to Extend Deadline to Disclose Expert
Testimony and hereby discloses the following expert witnesses;

1. Michael J. Canaan, CPP, CFLC
Trident Investigative Service, Inc.
P.O. Box 5909
Kent, WA 98064-5909
(253) 852-7000

Michael J. Canaan has been retained by IPC International Corp. as an expert witness.
Mr. Canaan will provide expert testimony regarding the standard of care applicable to Defendant

LAW OFFICES

Dynan & Associates, P.S.

**DEFENDANT IPC INTERNATIONAL CORP.'S
SUPPLEMENTAL DISCLOSURE OF EXPERT
WITNESSES - 1
3:08-cv-05754-BHS**

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1 IPC as a security provider, and IPC's compliance with that standard of care. Mr. Canaan will
 2 also testify regarding various other matters that are more fully detailed in his written report of
 3 opinions, which is produced concurrently herewith. Mr. Canaan may also be called upon to
 4 provide rebutting and/or challenging the findings, conclusions, testimony and/or opinions of
 5 Plaintiff's expert who offer expert testimony related to Mr. Canaan's field of expertise. Mr.
 6 Canaan's report and CV are attached.

7
 8 2. Henry Gill
 9 Trident Investigative Service, Inc.
 10 P.O. Box 5909
 11 Kent, WA 98064-5909
 12 (253) 852-7000

13 Henry Gill has been retained by IPC International Corp. as an expert witness. Mr. Gill
 14 will provide expert testimony in regards to Plaintiff's use of force during his confrontation with his
 15 assailant and generally accepted standards and principles governing the appropriate use of force by
 16 armed persons. He may also be called upon to provide rebuttal to the findings, conclusions,
 17 testimony and/or opinions of Plaintiff's expert who offer expert testimony related to Mr. Gill's
 18 field of expertise. Mr. Gill's report and CV are attached.

19 3. Gerald M. Rosen, Ph.D
 20 117 East Louisa St.
 21 PMB-229
 22 Seattle, WA 98102
 23 (206) 322-2700

24 Dr. Rosen is a clinical psychologist has been retained by IPC International Corp as an
 25 expert witness. Dr. Rosen performed an independent psychological evaluation of the Plaintiff.
 26

**DEFENDANT IPC INTERNATIONAL CORP.'S
 SUPPLEMENTAL DISCLOSURE OF EXPERT
 WITNESSES - 2
 3:08-cv-05754-BHS**

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1 He will be called to testify as to his findings and opinions of his evaluation of the Plaintiff. He
 2 may also be called upon to provide rebutting and/or challenging the findings, conclusions,
 3 testimony and/or opinions of Plaintiff's expert who offer expert testimony related to Dr. Rosen's
 4 field of expertise. Dr. Rosen's report and CV are attached.

5 4. Neil Beaton
 6 Alvarez & Marsal
 7 1201 Third Avenue
 8 Suite 800
 9 Seattle, WA 98101
 10 (206) 664-9000

11 Mr. Beaton is a forensic economist who may be called upon to testify regarding certain of
 12 Plaintiff's claimed economic damages, including Plaintiff's wage loss claims and the expected
 13 value of Plaintiff's working life. **Mr. Beaton's report is attached.** Mr. Beaton's CV is
 14 attached.

15 5. Kathryn Reid, MA, CRC, CCM
 16 Reid Case Management, Inc.
 17 100 West Harrison St.
 18 North Tower, Suite 450
 19 Seattle, WA 98119
 20 (206) 282-8282

21 Ms. Reid is a certified rehabilitation counselor and may be called to testify regarding
 22 Plaintiff Brendan McKown's physical rehabilitation, capacity to work, and the like. Ms. Reid's
 23 report of opinions and CV are attached.

24 6. Cheryl Hayes, DO
 25 Core Injury Management
 26 425 SW 41st St.
 Renton, WA 98057
 425.226.1190

DEFENDANT IPC INTERNATIONAL CORP.'S
SUPPLEMENTAL DISCLOSURE OF EXPERT
 WITNESSES - 3
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Dr. Hayes is an osteopath and performed a medical examination on Plaintiff Brendan McKown. Dr. Hayes may be called upon to testify regarding McKown's injuries and physical limitations. Her report and CV are attached.

RESERVATION OF RIGHTS

Defendant IPC International Corp. reserves the right to supplement and/or amend this disclosure. Discovery is ongoing in this matter, and defendant IPC International Corp. reserves the right to supplement this disclosure and the attached reports based upon ongoing discovery, including if any new or different opinions are revealed by other defendants, plaintiff's experts or treating providers of Plaintiff.

Defendant IPC also specifically reserves the right to rely on the opinions expressed by any expert disclosed by co-defendant Simon Property Group.

DATED this 33rd day of May, 2016.

/s/ MARK J. DYNAN

DYNAN & ASSOCIATES, P.S.
Attorneys for Defendant **IPC**
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/s/ MATTHEW T. WOOD

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DEFENDANT IPC INTERNATIONAL CORP.'S
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WITNESSES - 4
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DECLARATION OF SERVICE

On this day, the undersigned served all parties of record, via the Court's CM/ECF system, which will ensure electronic delivery, with a copy of the foregoing document entitled **DEFENDANT IPC INTERNATIONAL CORP.'S SUPPLEMENTAL DISCLOSURE OF EXPERT WITNESSES** as follows:

<u>Attorney for Plaintiff, Brendan McKown</u> Darrell L. Cochran Pfau Cochran Vertetis Amala PLLC 911 Pacific Ave Ste 200 Tacoma, WA 98402-4413 E-mail: darrell@pcvalaw.com Office: (253)777-0799 Fax: (253)627-0654	<u>Attorney for Plaintiff, Brendan McKown</u> Jason P. Amala Pfau Cochran Vertetis Amala PLLC 403 Columbia St Ste 500 Seattle, WA 98104-1625 E-mail: jason@pcvalaw.com Office: (206) 462-4339 Fax: (206) 623-3624
<u>Attorney for Co-Defendant, Simon Property Group</u> Thomas Jeffrey Keane Keane Law Offices 100 NE Northlake Way, Suite 200 Seattle, WA 98105-6871 E-mail: tjk@tjkeanelaw.com Office: (206) 438-3737 Fax: (206) 632-2540	<u>Attorney for Plaintiff, Brendan McKown</u> Rodney B. Ray Margullis and Ray Attorneys At Law, PLLC 2601 N Alder St Tacoma, WA 98407-6264 E-mail: roray@mlr-law.com Office: (253) 752-2251 Fax: (253) 752-1071

I declare under penalty of perjury under the Laws of the United States that the foregoing is true and correct.

Dated at Tacoma, Washington this 23rd day of May, 2016.

By: /s/ Taylor Kindred
DYNAN & ASSOCIATES, P.S.
2102 North Pearl Street, Suite D-400
Tacoma, WA 98406-2550
Telephone: (253) 752-1600
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LAW OFFICES

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**DEFENDANT IPC INTERNATIONAL CORP.'S
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WITNESSES - 5
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May 20, 2016

VIA E-MAIL ONLY

Mr. Matthew T. Wood
 Dynan & Associates, P.S.
 2102 North Pearl Street, Building D, Suite 400
 Tacoma, WA 98406

Re: McKown v. IPC International, et al.

Dear Mr. Wood:

At your request, and based on the information available to date, we have formed a preliminary opinion of the economic damages, if any, that may have been incurred by Mr. Brendan McKown as a result of injuries he sustained when he was shot and injured at the Tacoma Mall on November 20, 2005.

Our preliminary work included consideration and/or analysis of certain records and documents, including:

1. Amended Complaint for Damages, dated January 2, 2009;
2. Employment records for Mr. McKown from Excalibur Cutlery & Gifts, Inc.;
3. Independent Medical Examination report prepared by Cheryl A. Hayes, dated February 24, 2016;
4. Deposition of Brendan McKown, dated September 28, 2010 and April 12, 2016;
5. Deposition of Dr. Brendon Hutchinson, dated October 14, 2010;
6. Official Report of Test Results of General Education Development ("GED") for Mr. McKown, dated July 17, 2009;
7. Mr. McKown's transcripts from Tacoma School District; and
8. Vocational assessment report prepared by Kathryn Reid, dated August 4, 2010 ("Reid Report").

BACKGROUND

Mr. McKown was born on [REDACTED], [REDACTED]. He did not graduate from high school but received his GED in 2009. Based on documents provided to me, Mr. McKown's work history included employment in retail, food service, and security companies, as well as working at a sheet metal company and in aircraft support.¹ On November 20, 2005, Mr. McKown was working at the Excalibur Cutlery & Gifts ("Excalibur") store in the Tacoma Mall when he was shot by a man firing a gun in the mall. Mr. McKown was 38 years old at the time of the incident. It is my understanding that Mr. McKown suffered injuries to his lower spine in the shooting.

¹ Reid Report, page 4.

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ALVAREZ & MARSAL'S DAMAGES ANALYSIS

Earnings Loss

We were asked to evaluate the lost earnings that may have been incurred by Mr. McKown as a result of injuries he sustained in the incident. We first estimated the earnings that Mr. McKown could have earned “but for” the incident, and then subtracted his actual and expected future earnings. Total lost earnings are calculated over the appropriate damage period and reduced to present value where appropriate.

We have not been provided with Mr. McKown’s tax returns or other documents that would provide more accurate and specific historical earnings. Instead, I have relied upon the Reid Report, which indicated that Mr. McKown was earning approximately \$10.50 per hour at the time of the incident. For purposes of this analysis, I have assumed that Mr. McKown’s “but-for” pre-incident earning capacity was \$21,840, which is based on a full-time equivalent annual wage of \$10.50 per hour. Future “but for” earnings growth was calculated based on average wage growth rates in Washington State.

I have assumed that Mr. McKown has not worked since the accident, and therefore, has no actual earnings to offset his “but-for” earning capacity. As shown on Schedule 1, Mr. McKown’s past lost earnings are estimated at \$284,100.

Based on the Reid Report, Mr. McKown may benefit from a limited vocational training program to support making an occupational transition. Mr. McKown has an employment history in customer service, record keeping, and cash handling, which makes him suitable for a position in customer service or a call center where he could potentially work from home. A 43-credit, two-quarter specialty program with classes in computer applications, telephone customer service, and call center procedures would cost \$3,762.² For purposes of this analysis, I have assumed that Mr. McKown would return to work in mid-2017 after completing the retraining program and obtaining a job.

The Reid Report further states that entry level customer service representatives earn \$24,294 annually. Since the Reid Report was prepared in 2010, I have adjusted the expected entry level earnings for wage growth until the date that Mr. McKown is expected to return to work. All future earnings loss has been discounted to present value at a risk-adjusted discount rate of 4.7 percent.³ Based on this analysis, I estimated Mr. McKown’s future lost earnings at \$53,000, as shown on Schedule 1.

As shown on Schedule 1, I have estimated Mr. McKown’s total lost earnings at \$337,100. With the cost of retraining included at \$3,762, Mr. McKown’s total economic loss is \$340,800.

² Reid Report, page 7.

³ Federal Reserve. Yields on Intermediate Term (5-years). The average medium-term U.S. government bond yield is 2.7 percent over the past 6 years.



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LIMITING CONDITIONS AND OTHER ASSUMPTIONS

We did not perform an audit of any materials reviewed, and have relied on such materials, and the responses to our inquiries, as being substantially true and correct. We have no personal bias with respect to the parties involved. The opinion stated herein is valid only for the express purpose stated in the introductory paragraph above and is effective as of the report date. In keeping with professional standards, our fees are not contingent upon the dollar amount of our findings.

We will be pleased to discuss the contents of this letter and the results of our work with you in detail at any time.

Sincerely,

Alvarez & Marsal Valuation Services, LLC


Neil J. Beaton, CPA/ABV/CFF, CFA, ASA
Managing Director

NJB:cac

Attachment – Schedule 1, Summary of Economic Loss





Brendan McKown
Summary of Economic Loss
Schedule 1

Facts and Assumptions

Date of Birth.....	
Date of Injury.....	11/20/2005
Age as of the Date of Injury.....	38.0
Estimated Worklife.....	20.5
Age at Estimated Retirement.....	58.6
Date of Estimated Retirement.....	5/28/2026
Present Value as of.....	5/31/2016
"But-For" Earning Capacity (1).....	\$ 21,840
Actual Earning Capacity (Pre-tax 2010 dollars) (2).....	\$ 24,294
"But for" Wage Growth Rate Assumption.....	3.7%
Discount Rate.....	4.7%

Economic Damage Analysis

Date Range	Age	"But-For" Pre-tax Earnings	Less: Actual / Expected Pre-tax Earnings	Net Lost Earnings	Present Value
Past Economic Loss					
11/20/2005 - 12/31/2005	38.2	\$ 2,513	\$ -	\$ 2,513	\$ 2,513
1/1/2006 - 12/31/2006	39.2	22,647	-	22,647	22,647
1/1/2007 - 12/31/2007	40.2	23,485	-	23,485	23,485
1/1/2008 - 12/31/2008	41.2	24,353	-	24,353	24,353
1/1/2009 - 12/31/2009	42.2	25,253	-	25,253	25,253
1/1/2010 - 12/31/2010	43.2	26,187	-	26,187	26,187
1/1/2011 - 12/31/2011	44.2	27,155	-	27,155	27,155
1/1/2012 - 12/31/2012	45.2	28,158	-	28,158	28,158
1/1/2013 - 12/31/2013	46.2	29,199	-	29,199	29,199
1/1/2014 - 12/31/2014	47.2	30,279	-	30,279	30,279
1/1/2015 - 12/31/2015	48.2	31,398	-	31,398	31,398
1/1/2016 - 5/31/2016	48.6	13,470	-	13,470	13,470
Total Past Economic Loss		\$ 284,096	\$ -	\$ 284,096	\$ 284,096
Future Economic Loss					
6/1/2016 - 12/31/2016	49.2	\$ 19,000	\$ -	\$ 19,000	\$ 18,316
1/1/2017 - 12/31/2017	50.2	33,762	(15,661)	18,101	16,660
1/1/2018 - 12/31/2018	51.2	35,011	(32,480)	2,530	2,223
1/1/2019 - 12/31/2019	52.2	36,305	(33,681)	2,624	2,201
1/1/2020 - 12/31/2020	53.2	37,647	(34,926)	2,721	2,179
1/1/2021 - 12/31/2021	54.2	39,039	(36,217)	2,821	2,158
1/1/2022 - 12/31/2022	55.2	40,482	(37,556)	2,926	2,136
1/1/2023 - 12/31/2023	56.2	41,978	(38,944)	3,034	2,115
1/1/2024 - 12/31/2024	57.2	43,530	(40,384)	3,146	2,094
1/1/2025 - 12/31/2025	58.2	45,139	(41,877)	3,262	2,073
1/1/2026 - 5/28/2026	58.6	18,971	(17,600)	1,371	832
Total Future Economic Loss		\$ 390,863	\$ (329,327)	\$ 61,536	\$ 52,988
Total Lost Earnings		\$ 674,959	\$ (329,327)	\$ 345,632	\$ 337,084
Plus: Estimated Cost of Retraining (3)				\$	3,762
Total Economic Loss				\$	340,846

Footnotes:

(1) Based on estimated \$10.50 / hour at full-time 2,080 hours per year

(2) Per the Reid Report, Page 8

(3) Per the Reid Report, Page 7